

The Canadian Maritime Law Association



L'Association Canadienne de Droit Maritime

Website: www.cmla.org

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PRESIDENT'S REPORT

To the Members of the Association:

I have the honour to present the following President's Report to the Annual General Meeting of the Association covering its activities from June 10, 2008 to June 9, 2009.

1. 2008 Annual General Meeting

The 57th Annual General Meeting of the Association was held in Vancouver on June 10, 2008, at the Terminal City Club and was attended by approximately 60 members. Special guests included Mr. Warren Marwedel, President of The Maritime Law Association of the United States, The Honourable Madame Justice Elizabeth Heneghan and The Honourable Mr. Justice Harrington of the Federal Court. A luncheon was held following the meeting at which Mr. Richard Bryant, President of the Chamber of Shipping of British Columbia, was our guest speaker.

2. Directors' Meetings

Four Directors' meetings were held during the past year, including meetings in Vancouver on June 10, 2008, at the offices of Bull, Housser & Tupper LLP, in Montreal on September 15, 2008, at the offices of Ogilvy Renault, in Toronto on January 16, 2009, at the offices of Borden Ladner Gervais LLP and in Ottawa on April 16, 2009, at the Rideau Club. I thank Richard Desgagnes of Ogilvy Renault and Michael Smith of Borden Ladner Gervais LLP, their respective firms and Bull, Housser & Tupper LLP for making their boardrooms available.

The Directors' meetings offer an excellent opportunity for participation by the membership in the work of the Association, particularly in Committee work. This was

particularly true over the past year, given the involvement of CMLA not only with the Rotterdam Rules and other proposed Conventions but also with respect to the maritime legislation introduced by the Federal Government in 2009.

3. Changes in the Executive

In March, 2009, I was advised by Jean-Francois Bilodeau that he would be unable to continue as Secretary-Treasurer of the Association due to his work commitments. Robert Wilkins of Borden Ladner Gervais LLP was approached and agreed to assume the office of Secretary-Treasurer. He was appointed Secretary-Treasurer effective April 16, 2009 at the Directors' Meeting held in Ottawa.

I wish to express my thanks to Mr. Bilodeau for his work as Secretary-Treasurer and to thank Mr. Wilkins for volunteering his service.

4. CMLA Members

I regret to advise that Peter Darling passed away in November, 2008. Peter was very active in the maritime bar in Halifax, in CMLA Committee work and he Chaired the New Directions in Maritime Law seminar held in Halifax in June, 2006.

I would also like to recognize in particular the contribution of some of our members who have retired over the past year.

A. Stuart Hyndman, Q.C., the former Chairman of the CSL Group (formerly Canada Steamship Line), retired at the end of June, 2008. He was President of the CMLA between 1964 and 1969 and was a former partner in McMaster Meighen and its successor firm, Borden Ladner Gervais LLP.

Richard Bryant, who served as President of our Constituent member, the Chamber of Shipping of British Columbia, retired as President of the Chamber effective September 8, 2009. He was for many years involved with CMLA as the Chamber of Shipping representative and was particularly instrumental in fostering the relationship of CMLA with government departments including Transport Canada and the Canadian Coast Guard.

Donald N. Morrison, who served as President of our Constituent member, The Canadian Shipowners Association, retired at the end of December, 2008.

5. Substantive Work

The substantive work of the Association will be reported on more fully by the Committee Chairs at the Annual General Meeting. However, it was a very busy year in which there were significant accomplishments.

(a) CMI Athens Conference – October, 2008

CMLA had 24 delegates who attended the 39th CMI Athens Conference. They included The Honourable Mr. Justice Marc Nadon of the Federal Court of Appeal, The Honourable Madame Justice Elizabeth Heneghan, The Honourable Madame Justice Johanne Gauthier and the Honourable Mr. Justice Sean Harrington from the Federal Court. There were nine Members from British Columbia, three from Toronto, four from Montreal and four from the Maritimes. Richard Southcott took the lead in the meetings on Places of Refuge and John O'Connor on Procedural Rules relating to Limitation of Liability. Barry Oland and Doug Schmitt led the Canadian delegation on the Uncitral Draft Convention on Contracts of the International Carriage of Goods Wholly or Partly by Sea (the "Rotterdam Rules").

I wish to thank all of the Canadian delegates who attended the Conference for their support and hard work. I would particularly like to recognize the assistance of Jeremy Bolger, John O'Connor and Chris Giaschi from the Association Executive.

I should also point out that The Honourable Madame Justice Gauthier who has been a member of the CMI Executive Council since 2001 and a past President of CMLA was elected a Vice-President of CMI on October 17, 2008. Nigel Frawley, another CMLA past President, continues as Secretary- General of CMI.

(b) Federal Government

In addition to CMLA's involvement with CMI, the Association has been active in making recommendations to the Federal Government and, in particular, Transport Canada, on legislation introduced this year. It is probably fair to say there was a record number of maritime Bills introduced into the House of Commons since the beginning of 2009. Following are references to a number of the Bills introduced.

Bill C-3, *An Act to amend the Arctic Waters Pollution Prevention Act* received third reading on June 2, 2009. The Legislative Summary may be found at <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&query=5652&Session=22&List=ls>

Bill C-9, *An Act to amend the Transportation of Dangerous Goods Act, 1992*, received royal assent on May 14, 2009. See <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&query=5671&Session=22&List=ls> for the Legislative Summary. Amendments to the Regulations have now been Gazetted. The Transport Canada Regulatory Impact Analysis Statement may be found at <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-05-02/html/reg2-eng.html>

Bill C-10, *An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and related fiscal measures (Budget Implementation Act, 2009)* which contained amendments to the Navigable Waters Protection Act, received royal assent on May 14, 2009. See <http://www.tc.gc.ca/mediaroom/releases/nat/2009/09-h067e.htm#bg> for the Backgrounder to the changes released May 9, 2009.

Bill C-16, *An Act to amend certain Acts that relate to the environment and to enact provisions respecting the enforcement of certain Acts that relate to the environment* (*Environmental Enforcement Act*). See <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&query=5747&Session=22&List=ls> for the Legislative Summary.

Bill C-7, *An Act to amend the Marine Liability Act and the Federal Courts Act and to make consequential amendments to other Acts*, was introduced into the House of Commons on January 29, 2009. The Legislative Summary may be found at <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&query=5656&Session=22&List=ls>

Written briefs were filed with the Standing Committee on Transport, Infrastructure and Communities ("SCOTIC") with respect to Bill C-7. Chris Giaschi, our Vice-President, West, appeared as a witness on behalf of CMLA before SCOTIC and is filing a brief before the Senate Transport and Communications Committee which has requested representations be made by CMLA.

Written representations were also filed with the Committee on Environment and Sustainable Development regarding Bill C-16. John O'Connor, our Vice-President, Quebec, appeared as a witness before the Committee and will also be appearing as a witness before the Senate Committee on Bill C-16.

As members will know, all substantive Committee work is done voluntarily. I wish to thank the Chairs and members of their Committees for their service with respect to Committee work and commend its excellent quality.

6. Open Meetings and Seminars

Numerous Open Meeting were held this year after the CMI Conference in Athens concluded in October. A very successful Open Meeting was organized by William Sharpe, our Vice-President, Central, in Oakville. The guest speakers included Serge Theoret and Frank Ritchie of Transport Canada who spoke on the Crewing Requirements and the AMP program under the *Canada Shipping Act, 2001*.

John O'Connor organized an Open Meeting in Montreal on January 22, 2009, in which Barry Oland was beamed in from Kelowna to Montreal by internet and spoke on the "Cougar Ace" decision of the Federal Court of Appeal and section 46 of the *Marine Liability Act*. An Open Meeting on the *Rotterdam Rules* was held in Montreal on March 26, 2009.

Another very successful Open Meeting was organized by Chris Giaschi in Vancouver on March 12, 2009.

William Moreira, Q.C. arranged for an Open Meeting on the *Rotterdam Rules* in Halifax on March 26, 2009.

Following the very successful CMLA Seminar in Vancouver held in June, 2008, you will be aware of the CMLA Seminar on "*Current Developments in Canadian Maritime Law*" to be held in Montreal on June 15, 2009 of which David Colford is the Chair. He and his organizing committee have done an excellent job. The registration may surpass that of the CMLA Seminar held in Vancouver last year. CMLA is now an accredited supplier of Continuing Legal Education in British Columbia and Quebec.

7. Maritime Industry Functions

I was unable to attend the Annual dinner of the Association of Average Adjusters of Canada but CMLA was represented by William Sharpe.

I had the privilege of representing CMLA at the Grunt Club Dinner held in Montreal on December 6, 2009, and the Marine Club Dinner in Toronto on January 16, 2009. I also attended the Marine Insurance Association Dinner in Vancouver on January 28, 2009.

While I was unable to attend The Canadian Board of Marine Underwriters Semi-Annual Meeting in Niagara Falls in May, CMLA was well represented by our CMLA Director Marc Isaacs.

I also had the honour of attending the APEC Port Services Network Council Meeting and the Consultative Shipping Group – International Chamber of Shipping Policy Seminar held in Vancouver, on May 4 – 5 and May 21, 2009, in which Transport Canada was a major participant.

8. Liaison with the Maritime Law Association of the United States ("MLAUS")

I had the honour of representing the Association at the MLAUS Annual General Meeting in New York in May, attended the Luncheon hosted by its Directors and was a guest of President Warren Marwedel at the USMLA dinner on May 1, 2009. I was also honoured to be invited to attend the American Maritime Cases Luncheon at which Michael Marks Cohen and Michael Sturley received special awards for their contribution to U. S. maritime law. Numerous Committee meetings were held during the week, a number of which I appreciated the opportunity to attend.

We are very fortunate in having a close association with the MLAUS. The Canadian delegation at the CMI Conference in Athens very much appreciated the invitation of President Marwedel to attend a joint meeting and breakfast hosted by the MLAUS.

There is an open invitation from the MLAUS to CMLA members to attend the MLAUS meetings and seminars and from CMLA for its members to attend our meetings and seminars. A number of our members attended the MLAUS Fall Meeting and Seminar held in Long Beach in November.

I encourage our members to attend the USMLA events and our Committee Chairs to liaise with their American counterparts. We look forward to seeing our American friends at the Bi-annual Joint CMLA – MLAUS Directors' Meeting which will be held this year in Quebec City in August.

9. Ottawa Meeting with Federal Government Officials

The 25th annual meeting between CMLA and federal government officials was held at Ottawa on April 16, 2009. Representatives of five of our constituent members attended the meeting. Representatives of Transport Canada, Fisheries and Oceans, Environment Canada, the Ship-source Oil Pollution Fund and the Transportation Safety Board of Canada participated. The meeting was of particular importance in view of the Bills put forward by Transport Canada and Environment Canada.

Mr. Allister Paterson, President and CEO of Seaway Marine Transport, was the special guest speaker at the luncheon held following the meeting and spoke on the numerous challenges faced by shipping companies such as Seaway Marine Transport operating in the Great Lakes, including not only the importance of renewing an ageing fleet but also the substantially different environmental regulations of various jurisdictions, including in particular, U.S. states bordering on the Great Lakes. Other special guests included Kristine Burr, Assistant Deputy Minister, Policy, Transport Canada, Craig Bishop, President, Canadian Ship Supply and Services association, Bruce Bowie, President, Canadian Shipowners Association, Michael Broad, President, The Shipping Federation of Canada and Bernie Cissek, President, The Canadian Board of Marine Underwriters.

10. Federal Court and Federal Court of Appeal Judges' Dinner

The annual dinner for CMLA officers and Justices of the Federal Court and Federal Court of Appeal was held on April 15, 2009. Our guests this year included, from the Federal Court of Appeal, The Honourable Chief Justice John Richard, The Honourable Mr. Justice Gilles Letourneau and The Honourable Mr. Justice Denis Pelletier. The Honourable Madame Justice Elizabeth Heneghan, The Honourable Madame Justice Johanne Gauthier, The Honourable Mr. Justice Sean Harrington and Prothonotary Mireille Tabib represented the Federal Court.

I was very pleased that Chief Justice Richard could join us as he will be retiring in June. CMLA very much appreciates the support given to CMLA by both Courts at this event and the longstanding professional relationship between CMLA and the Federal Court and Federal Court of Appeal.

11. Upcoming Events and News

Upcoming events are posted on the CMLA website at www.cmla.org/ . The following events may be of interest.

The Canadian Bar Association National Maritime Law Section Meeting will be held on Sunday, June 14, 2009, in Montreal commencing at 2:30 p.m. at Le Centre Sheraton Montreal Hotel, 1201 Boulevard Rene-Levesque West. A Maritime Section dinner will be held at Restaurant Bis, 1220 rue de la Montagne to which meeting participants are invited. If you plan to attend, please RSVP by e-mail to Astrid Hoffman , CBA Coordinator(astridh@cba.org)

The CMLA Maritime Law Seminar on “Current Developments in Canadian Maritime Law ” will be held on Monday, June 15, 2009, at 9:00 a.m. at McGill Law School. It is now accredited for 6 CLE hours for B. C. and Quebec Lawyers. The final date for registration is tomorrow, June 10, 2009, at 1700 hours Montreal time. For registration information see the CMLA website at www.cmla.org/

The CMLA Annual General Meeting will be held June 16, 2009, at 9:00 a.m. for 9:30 a.m. at the University Club, 2047 Mansfield Street, Montreal followed by lunch at 12:30 p.m. following the meeting. There are still a few places available for the luncheon. Those who wish to attend should contact Robert Wilkins by e-mail at rwilkins@blgcanada.com

The Average Adjusters Association Annual General Meeting and Dinner will be held in Montreal on June 16, 2009, at the St. James Club at 5:30 p.m. For further information, see the CMLA website.

The Rotterdam Rules Colloquium and Signing Ceremony is scheduled to be held between September 20-23, 2009, at Rotterdam, Netherlands. For further information see <http://www.rotterdamrules2009.com/cms/index.php?page=registration-policies> . If any CMLA members plan to attend, I would be grateful if they could let me know.

The Maritime Law Association of the United States is holding its fall meeting this year November 3 – 7, 2009, at Hilton Head Island, South Carolina. Further details will be available in due course at the MLAUS website at <http://www.mlaus.org/events.ihtml>

China Maritime Law Association is holding The Seventh International Conference on Maritime Law in Shanghai November 13 – 15, 2009.

12. In conclusion, I wish to express my appreciation for the hard work and dedication of all of the Association’s officers, directors, committee chairs and representatives of Constituent members.

As my term as President will be over this month and as I move to a Past President, I wish to thank the Executive and Directors for their support over the past 2 years. I

particularly wish to thank, our National Vice-President, Jeremy Bolger, our Regional Vice-Presidents Chris Giaschi, William Sharpe and Cecily Strickland and our Past President, William Moreira. I would also be remiss if I did not thank Jean-Francois Bilodeau who stepped down as Secretary-Treasurer in April and welcome Robert Wilkins who has taken on the position of during an extremely busy year.

All of which is respectfully submitted.

A handwritten signature in black ink that reads "Michael J. Bird". The signature is written in a cursive style with a large initial 'M' and a distinct 'J'.

Michael J. Bird
President